

Notice of Allowability

Application No.

09/876,257

Examiner

Jeffrey E. Russel

Applicant(s)

MELOEN ET AL.

Art Unit

1654

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the amendments after final rejection filed 06/04/2004 and 11/04/2004, entered.
2. ☒ The allowed claim(s) is/are 1-4 and 6-15.
3. ☐ The drawings filed on _____ are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413),
Paper No./Mail Date 20041108; 20041116; 20041216
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

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EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

2.(Currently Amended) A peptide [according to claim 1] characterised in that it comprises an amino acid sequence that comprises the structure (SEQ ID NO: 4):

1 6 16 21
#EHWSY*LRPGQHWSY*LRPGC

wherein the amino acid * at position 6 or 16 is a dextrorotatory amino acid with a side chain that can be coupled to a carrier compound and the other amino acid * is either glycine or a dextrorotatory amino acid with a side chain that can be coupled to a carrier compound.

9.(Currently amended) A [composition] peptide in accordance with [claims] claim 1 [additionally comprising] combined with a mild adjuvant.

12.(Currently Amended) A method comprising [for] inoculating an animal with a vaccine according to claim 11.

13.(Currently Amended) A method comprising [for] inoculating an animal with a vaccine according to claim 11 wherein [the] an effective amount is less than about 1 mg.

Authorization for the examiner's amendment to claim 9 was given in a telephone interview with Agent Yury M. Colton on November 16, 2004. Authorization for the examiner's amendment to claims 2, 12, and 13 was given in a telephone interview with Attorney Allen C. Turner on December 16, 2004.

REMARKS

1. The amendments after final rejection filed June 4, 2004 and November 4, 2004 have been entered.
2. The appropriate maintenance fees for U.S. Patent No. 5,885,966 have been paid, and therefore the reissue procedures are available for this patent.
3. The consent of the assignee to reissue application 09/876,257 has been received on January 16, 2004.
3. The original patent was surrendered and received on November 4, 2004, and therefore the requirement set forth in 37 CFR 1.178(a) has been satisfied.
4. The reissue declaration under 37 CFR 1.175 filed November 4, 2004 is approved and overcomes the rejection set forth in section 5 of the final Office action mailed March 4, 2004.
5. The following is an examiner's statement of reasons for allowance: Claims 1-4 and 6-15 are deemed to be allowable over the prior art of record or any combination thereof. The prior art of record does not teach or suggest peptides having the structures recited in instant claims 1-4. Accordingly, compositions comprising the peptides and methods of using the peptides are also novel and unobvious over the prior art of record.

Meloan et al (U.S. Patent No. 6,761,890) and Meloan et al (U.S. Patent Application Publication 2004/0166118) are cited as art of interest, but their claims are not deemed to raise any issues of obviousness-type double patenting with the instant claims.

The phrase "wherein said contiguous LHRH decapeptide sequences are joined with a terminus to terminus linkage", inserted into claim 2 by the amendment filed June 4, 2004 and deleted in the above examiner's amendment, is redundant to the structure explicitly recited in the

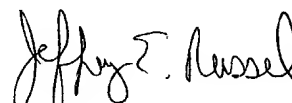
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claim. Residues 1-10 of the structure in claim 2 is a LHRH sequence, and residues 11-20 of the structure in claim 2 is a second LHRH sequence, so that the whole structure is two contiguous LHRH decapeptide sequences joined with a terminus to terminus linkage, plus an additional cysteine residue at the C-terminus. Column 5, line 37, of the patent confirms this interpretation by referring to the structure as a "tandem unit".

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey E. Russel at telephone number (571) 272-0969. The examiner can normally be reached on Monday-Thursday from 8:30 A.M. to 6:00 P.M. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor Bruce Campell can be reached at (571) 272-0974. The fax number for formal communications to be entered into the record is (571) 273-8300; for informal communications such as proposed amendments, the fax number (571) 273-0969 can be used. The telephone number for the Technology Center 1600 receptionist is (571) 272-1600.



Jeffrey E. Russel

Primary Patent Examiner

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